

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Criminal No. 00-CR-50054

vs.

HON. BERNARD A. FRIEDMAN

JAMES DWIGHT LEWIS,

Defendant.

**ORDER TRANSFERRING DEFENDANT'S "PETITION FOR WRIT OF
AUDITA QUERELA PURSUANT TO 28 U.S.C. § 1651" TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT**

Defendant has filed a "petition for writ of audita querela pursuant to 28 U.S.C. § 1651" [docket entry 204]. In this petition, defendant argues that his sentence is unconstitutional. The petition therefore appears to be a second or successive 28 U.S.C. § 2255 motion, the first such motion having been filed on July 20, 2004 [docket entry 144]. A second or successive § 2255 motion "must be certified as provided in section 2244 by a panel of the appropriate court of appeals" Section 2255. When, as in this case, a second or successive § 2255 motion is filed without the required certification, the district court is required to transfer the motion to the court of appeals. *See In re Hanserd*, 123 F.3d 922, 934 (6th Cir.1997). Accordingly,

IT IS ORDERED that defendant's "petition for writ of audita querela pursuant to 28 U.S.C. § 1651" is hereby transferred to the United States Court of Appeals for the Sixth Circuit.

Dated: July 13, 2009
Detroit, Michigan

_____/s/Bernard A. Friedman_____
BERNARD A. FRIEDMAN
SENIOR UNITED STATES DISTRICT JUDGE